

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

LAMAR EVERICK TURNER,
Appellant,

DOCKET NUMBER
DC-0752-12-0107-I-1

v.

DEPARTMENT OF HOMELAND
SECURITY,
Agency.

DATE: February 1, 2013

THIS FINAL ORDER IS NONPRECEDENTIAL¹

LaMar Everick Turner, Pasadena, Maryland, pro se.

Leigh M. Hoburg, Esquire, Washington, D.C., for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mark A. Robbins, Member

FINAL ORDER

The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge, which dismissed his reduction in pay or grade appeal for lack of jurisdiction. For the

¹ A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See [5 C.F.R. § 1201.117\(c\)](#).

following reasons, we dismiss the petition for review as untimely filed with no showing of good cause for the delay.

The Board's regulations provide that a petition for review must be filed within 35 days of the issuance of an initial decision. *See* [5 C.F.R. § 1201.114](#)(e).² The Board will waive this time limit only upon a showing of good cause for the delay in filing. [5 C.F.R. §§ 1201.12](#), .114(g). To establish good cause for an untimely filing, a party must show that he exercised due diligence or ordinary prudence under the particular circumstances of the case. *Alonzo v. Department of the Air Force*, [4 M.S.P.R. 180](#), 184 (1980).

Here, the initial decision became final on April 17, 2012. Initial Decision at 9. The appellant filed his petition for on April 18, 2012. Petition for Review (PFR) File, Tab 1 at 1. He received a notice from the Clerk of the Board that his petition for review was untimely because it was due on or before April 17, 2012. PFR File, Tab 2. The notice informed him of the applicable regulations and the requirements for filing a motion to (1) accept the filing as timely, and/or (2) waive the time limit for good cause. *Id.* The Clerk also provided a form "Motion to Accept Filing as Timely or to Waive Time Limit." PFR File, Tab 2. The appellant did not respond. The Board has denied a waiver of its filing deadline if good reason for the delay is not shown, even where the delay is brief and the appellant is pro se. *See Harris v. Department of Defense*, [101 M.S.P.R. 123](#), ¶ 10 (2006). Because the appellant did not respond to the Clerk's notice regarding timeliness and has offered no explanation for the delay in filing his petition for review, he has not established good cause for the untimely filing. Thus, we

² Except as otherwise noted in this decision, we have applied the Board's regulations that became effective November 13, 2012. We note, however, that the petition for review in this case was filed before that date. Even if we considered the petition under the previous version of the Board's regulations, the outcome would be the same.

dismiss the petition for review as untimely filed with no showing of good cause for the delay. [5 C.F.R. § 1201.114](#)(g).

This is the final decision of the Merit Systems Protection Board concerning the timeliness of the petition for review. The initial decision will remain the final decision of the Board with regard to the Board's jurisdiction over the underlying appeal. Title 5 of the Code of Federal Regulations, section 1201.113(c) ([5 C.F.R. § 1201.113](#) (c)).

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after the date of this order. See [5 U.S.C. § 7703](#)(b)(1)(A) (as rev. eff. Dec. 27, 2012). If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. See *Pinat v. Office of Personnel Management*, [931 F.2d 1544](#) (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 ([5 U.S.C. § 7703](#)) (as rev. eff. Dec. 27, 2012). You may read this law as well as other sections of the United States Code, at our website, <http://www.mspb.gov/appeals/uscode/htm>. Additional information is available at the court's website, www.cafc.uscourts.gov.

Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's [Rules of Practice](#), and [Forms](#) 5, 6, and 11.

FOR THE BOARD:

William D. Spencer
Clerk of the Board

Washington, D.C.